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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,722	01/28/2004	Ralph O. Johnson III	616/15A	3459

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EXAMINER

KATCHEVES, BASIL S

ART UNIT PAPER NUMBER

3635

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/766,722

Applicant(s)

JOHNSON, RALPH O.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claims 1 and 7 are objected to.

Regarding claim 1, claim 1 recites the limitation "the masonry anchor" in line 9. There is insufficient antecedent basis for this limitation in the claim.

The preamble of claim 1 is drawn to a subcombination connecting bracket. However, the claim recites connecting the bracket with a support frame, complimentary connector and wall which sets forth a positive relationship between these structures. Applicant should note that the claims have inconsistent language and are being considered as drawn to the combination. Applicant must clarify the intention.

Claim 7 recites the limitations "the hooks" and "the eyes" in line 22. There is insufficient antecedent basis for these limitations in the claim.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-18, respectively, of U.S. Patent No. 6,735,915 to Johnson, III. Although the conflicting claims are not identical, they are not patentably distinct.

Regarding claim 1, claim 13 of '915 claims a masonry bracket having first and second spaced apart arms with connectors on the arm ends for engaging complimentary connectors carried by a connecting member in a mortar joint, the arms connected by a cross member, the cross member having a curve which defines two spaced apart weld points. However, claim '915 does not disclose the cross member as being spaced from a support frame between the weld points. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '915 by having a space between the concave portion and support frame, as concave portions are not parallel and would cause the cross member to be spaced.

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Claims 2 is a substantial duplicate of claim 14 of '915.

Claim 3 is a substantial duplicate of claim 15 of '915.

Claim 4 is a substantial duplicate of claim 16 of '915.

Claim 5, is a substantial duplicate of claim 17 of '915.

Claim 6 is a substantial duplicate of claim 18 of '915.

***Allowable Subject Matter***

Claims 7 and 8 appear to be drawn to allowable subject matter. However, final determination of allowability for the claims will be made after all objections have been corrected. Regarding claim 7, the prior art of record does not disclose a method of anchoring first and second walls together by providing a masonry anchor having a support frame, embedded in a mortar joint, the frame having a plurality of brackets attached to the frame on the same plane as the frame, the brackets having two extending arms and connecting members on the ends of the arms and a cross member between the two arms, the cross member having a concave shape relative to the support frame and the cross member has first and second spaced apart welding contact points. Claim 8 depends from claim 7.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to masonry wall connectors in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK

  
Basil Katcheves

7/29/04

Examiner AU 3635